

The CORPORATION JOURNAL

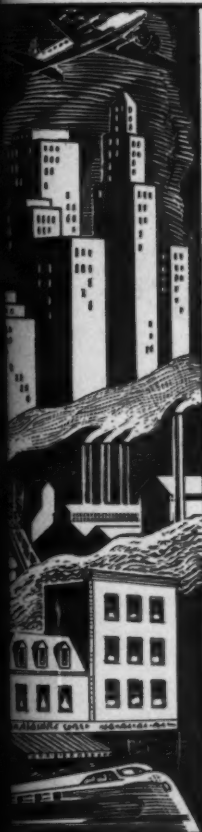
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FEBRUARY—MARCH 1958

Complete No. 413



In Delaware derivative suit, shareholder must state intra-corporate efforts made to contact other stockholders or reasons for not making such efforts Page 65

Michigan city permitted to sue directly on property tax claim in Illinois court, based on principles of comity Page 69

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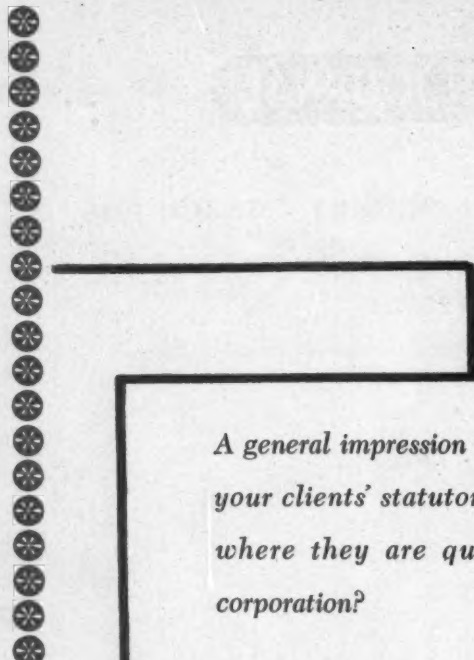
Contents

Doing Business in New States—Southern States—Domestic Corporations—Annual State Taxes	63
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Recent Decisions

Delaware—Derivative suit—requirements	65
—Derivative suit—stock ownership	66
Illinois—Comity—collection of taxes	69
Indiana—Property taxes—infrastate commerce	72
New Jersey—Doing business—contract—suit by assignee	67
—Mandatory payment of dividend	67
—Service of process—doing business	68
Ohio—Property taxes—imported ores	72
South Carolina—Income tax—preferred stock dividend	73
Washington—Business and occupation tax liability	74

State Legislation	74
Appealed to The Supreme Court	75
Regulations and Rulings	76
Some Important Matters for February and March	77



A general impression that "all is right" with your clients' statutory agents in all states where they are qualified as a foreign corporation?

Or are you certain?

You are if your clients are CT-represented. There's no "guess so" in C T representation.

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doing business in new states

Southern States—Domestic Corporations Annual State Taxes

NOT INFREQUENTLY, attorneys have occasion to review the situation of a client corporation which is considering the transfer of its home office or plant to a Southern state, in which the company is to qualify,¹ or in which the re-incorporation of the company is contemplated. Where it is feasible to consider more than one such state, the impact of *annual taxes* imposed by the eligible state is one of the important factors to be weighed.

This discussion, limited to a consideration of annual state taxes of a *domestic* corporation, outlines generally the probable incidence of annual taxes upon such a domestic company, with specific reference to income taxes, franchise taxes, sales taxes, chain store taxes and property taxes. Usually, of course, many factors other than tax considerations also enter into the final selection of a state for the re-location and possible re-incorporation of a corporation, such as proximity to markets, labor, available sites and the provisions of local laws.

In *Alabama*, domestic corporations pay a franchise tax of \$2.50 on each \$1,000 of the capital stock. Paid capital stock forms the basis of the fee paid in connection with the annual application for permit, the graduated rates ranging from \$10 where the amount is \$25,000 or less, to \$100, where the amount is over \$150,000. Property taxes are moderate. A net income tax is imposed upon domestic corporations at the rate of 3% of their net income. A 3% retail sales and use

tax is also levied. A number of cities, including Anniston, Decatur, Florence, Gadsden, Huntsville, Jasper, Montgomery, Sheffield, Talledega and Winfield and several counties, Bibb, Colbert, Franklin, Hale, Lauderdale, Lawrence, Limestone, Marion, Pickens and Tuscaloosa, impose local retail sales taxes. A license tax is imposed on stores established in the state.

Arkansas levies a franchise tax on corporations at the rate of 11/100 of 1% of that proportion of the par value of the outstanding capital stock that the value of the real and personal property in Arkansas bears to the total value of such real and personal property. For the purpose of this tax, shares without par value are taken to be of the par value of \$25. A domestic corporation organized for the purpose of doing business entirely outside of Arkansas is subject to a franchise tax of \$5. An income tax is imposed at graduated rates ranging from 1% to 5% upon the net income of domestic corporations. A 3% gross receipts or sales tax and a 3% compensating or use tax are levied. Property tax rates range from low to moderate.

Florida has no income tax and no franchise tax. The rate applied to real property and tangible personal property is moderate and the rates applicable to intangibles, which are separately classified for the property tax purposes, are low. The filing fee related to the annual

¹ For a discussion of the selection of a state in which qualification may be effected under such circumstances, see "Doing Business in New States—Southern States—Qualification", The Corporation Journal, October—November, 1957, page 23.

report, referred to at times as a "capital stock tax" and as a "franchise tax", is not high. A 3% retail sales and use tax is imposed and a state tax is in effect with respect to chain stores operated in the state.

Georgia's income tax rate is 4%. It also imposes a moderate franchise or license tax. The ad valorem tax rates applicable to real property and tangible personal property are moderate and the rates applying to intangibles having a Georgia situs, which are separately classified for property tax purposes, are low. A 3% retail sales and use tax is levied.

Louisiana's franchise tax is \$1.50 per \$1,000 for major fraction thereof of the amount of the capital stock, surplus, undivided profits and borrowed capital allocable to the state, but this taxable portion is in no case to be less than the total assessed value of real and personal property of the corporation in the state for the calendar year preceding that in which the tax is due. Domestic corporations are taxed at the rate of 4% upon net income from all sources in excess of an exemption of \$3,000. A 2% sales and use tax is levied and a chain store tax is imposed at graduated rates, the bracket applied to Louisiana stores being dependent upon the total number of stores owned everywhere. The cities of Baton Rouge, Bogalusa and New Orleans and the Parishes of East Baton Rouge and Jefferson also impose sales and use taxes. Property taxes are moderate.

In *Mississippi*, a franchise tax is exacted at the rate of \$2 per \$1,000 or part thereof of the value of the corporation's capital used, invested or employed in Mississippi, measured by its combined issued and outstanding capital stock, surplus and undivided profits employed in Mississippi. A graduated scale of rates from 2% to 6% is paid by domestic corporations on their entire net income.

The 2% rate is applied to the first \$5,000 of taxable income and the 6% rate to taxable income in excess of \$25,000. A gross sales tax is imposed at varying rates depending upon the type of business done, the rate on retail sales of tangible personal property being 3%. Approximately forty cities impose city sales taxes which are collected in conjunction with the state gross sales tax. A state use or compensating tax is levied at the same rate. Property taxes are moderate. Local, as well as state-wide chain store taxes are imposed.

North Carolina's income tax rate is 6%. In addition, there is a moderate franchise tax. Property tax rates on real estate and tangible personal property are relatively low, as are the rates on intangible personal property, which is classified and taxed by the state. A chain store tax is levied and there is a 3% retail sales and use tax.

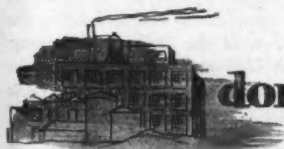
The *Oklahoma* franchise tax is \$1.25 for each \$1,000 or portion thereof of the corporation's capital used, invested or employed in Oklahoma, the minimum tax being \$10 and the maximum \$20,000. A corporate net income tax is imposed at the rate of 4% of the net income derived from property owned and business transacted in Oklahoma and derived from property owned partly within and partly without the state and business done partly within and partly without the state. Property taxes are comparatively moderate. A 2% sales and use tax is levied.

South Carolina's corporate income tax rate is 5%, applied to the entire net income of domestic corporations not having an established business or investment in property in another state. A moderate annual license tax is imposed. The rate applied to real property and tangible personal property is relatively low. A retail sales and use tax of 3% is levied. A moderate annual license is imposed.

In *Tennessee*, a privilege or franchise tax is exacted, on the basis of a statutory apportionment formula, at the rate of 15¢ on each \$100, or major fraction thereof, of the issued and outstanding capital stock, surplus and undivided profits. An excise tax is imposed at the rate of 3.75%, measured by the entire net earnings of the corporation apportioned to Tennessee under statutory ratios. A filing fee, paid in connection with the filing of an annual report may at the corporation's option, be either $\frac{1}{4}$ of 1% of the gross amount of receipts for the previous calendar year arising from business done wholly within Tennessee, with a minimum of \$25, or be based on the capital stock at graduated rates ranging from \$5 to \$150. Property taxes are moderate. A 3% sales and use tax is imposed, as well as a chain store tax applied to those engaged in the business of operating branch or retail stores in excess of one in the state.

The *Texas* franchise tax is \$2.25 for each \$1,000, or fractional part thereof, on that proportion of the stated capital, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures, as the gross receipts from business done in Texas bear to the total gross receipts of the corporation from its entire business. Property taxes are moderate. A chain store tax is imposed at rates ranging from \$4 for the first store to \$825 for the fifty-first store and all additional stores operated in the state.

In *Virginia*, the income tax rate is 5%. This state imposes a relatively low franchise tax on domestic corporations. There is an annual registration fee with a maximum of \$25. Real property, tangible personal property and classified intangible property tax rates are comparatively low. While neither sales, use or chain store taxes are levied, license taxes are imposed on retail merchants, wholesale merchants and distributors.



domestic corporations

DELAWARE

In derivative suit, shareholder must state intracorporate efforts made to contact other stockholders or reasons for not making such efforts.

In *Mayer v. Adams et al.*, 133 A. 2d 138, (The Corporation Journal, October—November 1957, page 28), the Court of Chancery held that, in a shareholder's suit to enforce a secondary right, the complaint must state with particularity the intracorporate effort made to contact the other stockholders, or the reasons for

not making such an effort. An additional opinion has been written in this litigation, subsequent to the filing of an amended complaint. The court, after an examination of the allegations, original and as amended, again came to the conclusion that an order was to be entered dismissing the complaint for failure to state

a claim upon which relief could be granted, remarking that "here there has been no effort whatsoever with fellow stockholders in a case in which, in my opinion, some effort should have been made. It is not incumbent upon me to surmise what proper and corrective action, if any, might result from demand. The fact is no demand has been made, and in my opinion sufficient reasons for failure to make the effort have not been pleaded."

Mayer v. Adams et al., 135 A. 2d 119. Clarence W. Taylor and Stewart Lynch of Wilmington, for plaintiff. Robert H. Richards, Jr., of Wilmington and Clark Clifford of Clifford & Miller of Washington, D. C., for Phillips Petroleum Co. and all individual defendants other than Eugene E. duPont, Charles A. Lemp and Kenneth S. Adams, Jr., Edwin D. Steel, Jr. and Harvey S. Kronfeld of Wilmington, for defendant, Ada Oil Co., Inc.

Stockholder of New York company who received shares in two Delaware companies upon anti-trust reorganization of New York company, held entitled to bring derivative suit on behalf of one of Delaware companies for acts antedating incorporation of that Delaware company.

Plaintiff was a stockholder of a New York corporation from 1941 to September, 1952, when, under a reorganization plan approved by stockholders following a federal anti-trust action, she received shares in two Delaware corporations. She sued derivatively for the benefit of one of these corporations and of a wholly owned subsidiary, seeking relief for acts allegedly occurring before as well as after the September 1952 date.

The Court of Chancery, New Castle County, considered defendants' motion to dismiss the complaint insofar as it complained of acts allegedly occurring prior to the September 1952 date, based on Section 327 of the Delaware Corporation Law. The court concluded that the plaintiff was not barred by the statute from complaining of matters which allegedly took place when she was a stockholder of the New York corporation, feeling that the fact that she held two

pieces of paper, rather than one as evidence of her 1941 investment in the New York corporation, should not foreclose her from complaining acts antedating the incorporation of the Delaware company, when such Delaware corporation was in effect a successor to the New York corporation.

Helfand v. Gambee et al., 134 A. 2d 558. Irving Morris of Wilmington and Milton Paulson of New York City, for plaintiff. William S. Potter and Henry R. Horsey of Berl, Potter and Anderson of Wilmington, and O'Melveny and Myers of Los Angeles, California, for defendants, National Theatres, Inc. and Fox Midwest Theatres, Inc. Edwin D. Steel, Jr. and Andrew B. Kirkpatrick, Jr. of Morris, Steel, Nichols and Arsh of Wilmington, and Byron Spencer of Kansas City, Missouri, for defendant E. C. Rhoden.

NEW JERSEY

Corporation held required to pay preferred stock dividend out of net profits, where charter provision made such payment mandatory.

Plaintiff Arizona corporation, a preferred stockholder in defendant New Jersey company, sued to recover dividends on 10,000 preferred shares under the certificate of incorporation, as amended in 1952 to provide as follows: "The holders of the preferred stock shall be entitled to receive and the Company shall be bound to pay thereon, but only out of the net profits of the Company, a fixed yearly dividend of Fifty Cents (50¢) per share, payable semi-annually." An identical provision appeared in the preferred stock certificate. The appeal to the United States Court of Appeals, Third Circuit, related only to the year 1955, when net profits were available.

The lower court had expressed the view that "notwithstanding the provision in the certificate of incorporation, a dividend should be payable only when

declared in the discretion and judgment of the board of directors." The appellate court posed the following question and answer: "Does the law of New Jersey support the conclusion that the provisions of the amended certificate of incorporation and the preferred stock certificate contractually bind Constantin to pay a dividend for 1955, net profits being available for the purpose? We conclude that it does."

Arizona Western Insurance Co. v. L. Constantin & Co., 247 F. 2d 388. Samuel M. Koenigsberg, of Newark, for appellant. Carl V. Greenburg, of Passaic, for appellee. (*Petition for writ of certiorari filed in the Supreme Court of the United States, October 25, 1957; Docket No. 575.*) *Certiorari denied, December 16, 1957.*



foreign corporations

NEW JERSEY

New York corporation, an assignee of a contract of another New York corporation doing business in New Jersey, held not empowered to maintain suit on the contract in New Jersey.

Plaintiff unlicensed New York corporation sued, as assignee of a contract made in New Jersey, but assigned in New York, between its assignor, also a New York corporation, not licensed although doing business in New Jersey, and the

defendant individuals. The defendants moved to dismiss the suit on the ground that the plaintiff was not entitled to maintain the suit. The District Court of New Jersey, Monmouth County, referred to R. S. 14:15-4, N. J. S. A., barring an

unlicensed foreign corporation transacting business in the state from suing in the state upon any contract made by it in the state until it obtains a certificate of authority from the Secretary of State. It also cited R. S. 14:15-5, N. J. S. A., imposing upon foreign corporations doing business in New Jersey the same requirements which would be applied to New Jersey corporations doing business in another state—a retaliatory statute. It quoted Section 218 of the General Corporation Law of New York—home state of plaintiff and its assignor—as denying a foreign corporation, doing business in New York, the right to maintain suit in New York upon a contract made by it in New York, “unless before making such contract it shall have obtained a certificate of authority,” and

noted that this section also provided that this prohibition applied to a successor or other person claiming under such successor of such foreign corporation or under either of them.

The court read these New Jersey and New York statutes together. It ordered the suit dismissed, concluding that the plaintiff could not circumvent the intention of the Legislature by the mere expediency of making an assignment in New York to another foreign corporation, thereby legitimatizing that which the Legislature has interdicted.

Admiral Discount Corporation v. Bovadikov et al., 135 A. 2d 56. Seymour R. Kleinberg of Keansburg, for plaintiff. Levchuk & Cerrato of Freehold, for defendants.

Entering into contract in New Jersey held to constitute “doing business” so as to uphold service of process on foreign company.

The defendant was a New York corporation, authorized to do business in New Jersey. Service was made upon it by serving the Secretary of State under N. J.S. 2A:15-26, N.J.S.A., which provides for service upon that official where the appointed registered agent has died and no new registered agent has been appointed, a circumstance which was present in this case. The cause of action involved a contract which was accepted and signed by the plaintiff in New Jersey and then mailed to the defendant.

In denying a motion of the defendant to set aside and vacate the service made upon the Secretary of State under the statute, the Superior Court of New Jersey concluded that “this cause of action not only made it a New Jersey contract but it also constituted a doing of business in New Jersey.”

Arco Welding & Machine Works, Inc. v. Terry Contracting, Inc., 131 A. 2d 316. Gardner & Williams (Walter F. Hoffman, appearing), of Passaic, for plaintiff. Fast & Fast (Herman L. Fast, appearing), of Newark, for defendant.



taxation

ILLINOIS

Michigan city permitted to sue directly upon property tax claim in Illinois court, based upon principles of comity.

The City of Detroit, Michigan, brought suit in the Circuit Court of Cook County, Illinois, to recover personal property taxes for two years, based upon the Michigan general tax laws, the Detroit city charter and the Detroit municipal code, against a resident of Cook County, Illinois, formerly a resident of Detroit. The county court dismissed the complaint and sustained defendant's motion to dismiss the complaint on the grounds that the revenue laws of one state have no force in other states, that the tax liability is not a contractual liability, that Illinois courts will not take jurisdiction of an action to enforce the revenue laws of another state, and that the complaint did not allege a judgment entitled to full faith and credit had been obtained in the Michigan courts against the defendant.

The Illinois Supreme Court, after tracing the history of attempts of one state to collect its taxes in another jurisdiction, inclined to what it regarded as a "modern rule" which views revenue laws as not being penal laws and permits a suit in one state for a tax lawfully levied by another. The court remarked: "The simplest ideas of comity would

seem to compel such a result, and modern conditions demand it." The court, in reversing the county court, observed: "This cause comes to this court upon a constitutional question: Must the courts of Illinois give full faith and credit to the taxing statutes of the State of Michigan? Having determined that upon principles of comity, the Illinois court should hear the plaintiffs' action, it becomes unnecessary for us to determine if the constitutional provision also requires the Circuit Court of Cook County to hear the cause. A constitutional question should not be decided if the cause can be determined on other grounds."

City of Detroit et al. v. Gould et al.,* 146 N. E. 2d 61. Suekoff, Frost & Spiegel of Chicago (Raymond I. Suekoff and Morris D. Spiegel of Chicago, and Joseph Maisano of Detroit, Mich., of counsel), for appellants. Scolnik & Lafferty (Avern B. Scolnik and Joseph S. Lafferty, of counsel), of Chicago, for appellees.

* The full text of this opinion is printed in the *State Tax Reporter*, Illinois, page 10,164.

LOCAL NEWS

If cumulative voting rights are not granted in the original articles of association, they may not be adopted later by amendment to such articles.

By-laws do not require alternate post office address to which notices to directors and stockholders may be sent.

Revised to add statements concerning State Charter Board procedure.

Revised to reflect changes made by the 1957 Legislature.

Revised to reflect changes promulgated by the Secretary of State.

Form to be filed with any amendment to the charter of a foreign corporation.

Now necessary to include the amount of capital to be used in the Resolution of the Directors.

Prior to this Act corporations had to pay the annual license fee.

Re: Fees charged by the Recorder of Conveyances.

It is no longer necessary, under the new Act, to set forth in the case of no par value shares the price per share at which it was issued.

Revised form issued by the Department of State.

Foreign corporations qualified prior to July 1, 1921 are not required to pay the annual fee of \$50.

To correct citations for preemptive rights.

Re: Gifts of securities to minors.

What you see is a small sampling of captions, notes and other information routed to all CT offices during the past few months. They apply to many different kinds of corporate filings in different states. Look them over and see how your CT office is put on immediate notice about major and minor changes in laws, rulings and regulations affecting corporations.

Revised form of charter issued by the Secretary of State.

Only city and state in which principal place of business is to be located are required to be set forth in charter.

Information as to filling out statement of resources and liabilities contained in the qualification papers.

Revised in accordance with 1957 amendments.

Typewritten copies are acceptable.

Notice of dissolution which must be filed after filing Articles of Dissolution.

For use when the new Corporation Law goes into effect.

No longer necessary to file articles and amendments upon qualification.

Under the new law directors need not be residents or shareholders.

Directors must be stockholders unless they are stockholders in another corporation owning voting stock of this corporation.

Recording with Recorder of Deeds no longer required.

All forms must be typed on 8½ by 11 white bond paper, typed on one side only.

Fee for filing Annual Report of Condition increased.

Minimum qualification fee increased from \$50 to \$60.

Wording of interrogatory 14 changed to indicate that amount of gross business transacted by the corporation everywhere is to be inserted.

Here you see why, when you call the CT office nearest you for information you can be sure it is the *latest*, most-complete information available. You know each CT office can give you *local news*, without charge, about state and Canadian corporation requirements, whether for your own state or a jurisdiction thousands of miles away.

INDIANA

Property tax ruled applicable to merchandise shipped into state before assessment date and stored for subsequent delivery to customers when required by them.

"This case," observed the Indiana Supreme Court, "involves the question of whether seed corn stored in appellant's warehouse in Indiana, where it had been transported from Illinois, remained an article of interstate commerce and thus exempt from Indiana personal property tax, or whether it had acquired a taxable situs in Indiana so as to be subject to the tax." The seed was shipped from Illinois into Indiana prior to March 1, the assessment date, against orders previously received and accepted from purchasers in Illinois and Indiana. The orders provided for delivery of the corn by appellant to the purchasers, at places designated by the purchasers, at Spring planting time, which was approximately from May 10 to May 20.

The Indiana Supreme Court ruled that the seed corn was no longer in interstate commerce, but had acquired a taxable situs in Indiana for purposes of personal property tax, affirming the judgment of the trial court, remarking: "The com-

merce clause does not extend to articles previously in interstate commerce but which are placed in the shipper's warehouse far in advance of the date of pretended delivery, so as to permit the shipper, without local tax liability, to engage in a warehouse business for his personal profit and benefit. The right of subsequent diversion of previous interstate orders to new customers at appellant's discretion gives appellant's warehouse the attributes of a local business."

Arthur Walter Seed Co. v. McClure,* 141 N. E. 2d 847. Gilbert M. Alsop of Vincennes, and K. Raymond Clark and James J. Costello, Jr., of Chicago, Ill., for appellant. Lewis & Funk and James J. Lewis of Vincennes, for appellee. (Petition for writ of certiorari filed in the Supreme Court of the United States, October 28, 1957; Docket No. 582. Certiorari denied, December 16, 1957.)

* The full text of this opinion is printed in the **State Tax Reporter**, Indiana, page 10,032.

OHIO

Constitutional tax exemption ruled not to apply to imported ores (1) after commingling with other ores imported at a different time and (2) after portions of ore were removed for use in manufacturing.

In its 1954 property tax return, the taxpayer eliminated from the average value of its reported manufacturing inventories certain inventories of property imported from foreign countries owned by it and held in various storage places in Ohio. The Tax Commissioner found these withheld inventories to be taxable and subse-

quently the Board of Tax Appeals ruled they were exempt.

The Ohio Supreme Court gave consideration to iron ores imported from five different foreign countries, for use in the taxpayer's furnaces. These ores were moved into a port of entry on vessels, each of which carried only one particular

grade of ore. At the port of entry, the entire cargo of ore from a particular vessel was discharged into railroad cars and transported in bulk to a storage yard of the taxpayer, adjacent to its manufacturing facilities. There it was unloaded and placed in a separate storage pile in a separate area of the ore yard. A separate storage pile was maintained for each of the five grades of imported ore and different vessel shipments of ore from a particular country were piled on top of other ore from that particular country as such additional shipments arrived. There was no mingling of grades of ore. The Ohio Supreme Court concluded: "If, pursuant to Clause 2 of Section 10 of Article 1 of the Constitution of the United States, the same protection from state taxes can be accorded to an imported fungible commodity such as iron ore as is accorded to goods imported in a package, we do not believe that such pro-

tection can extend to such iron ore (1) after it has been commingled with other iron ore imported at a different time, even though such other iron ore is of the same grade and was imported from the same place, and (2) after portions of such iron ore have been removed for use in manufacturing."

Youngstown Sheet & Tube Co. v. Bowlers,* 140 N. E. 2d 313. Carlton S. Dargusch, Sr., and Jack H. Bertsch of Columbus, for Youngstown Sheet & Tube Co. C. William O'Neill, Attorney General and Larry Snyder and Kiehner Johnson, for Tax Commissioner. (*Appeal filed in the Supreme Court of the United States, October 30, 1957; Docket No. 588. Probable jurisdiction noted, January 6, 1958.*)

* The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 11,612.

SOUTH CAROLINA

Dividend of preferred stock, issued by corporation to individual who owned all of corporation's common stock, held taxable as income.

The following question was before the South Carolina Supreme Court: "Is the dividend of preferred stock by a corporation, whose outstanding stock was all common stock and owned by one individual, taxable as income to the owner of the common stock?"

The Court affirmed a judgment holding that such a preferred stock dividend was income and subject to the South Carolina income tax. It emphasized that the Income Tax Act of 1926 was a separate and distinct income tax law, in the enactment of which the General Assembly refused to adopt the provisions in the then current Federal Act, which specifically exempted stock dividends from income tax. "It is logical to conclude," observed the court, "that the General Assembly of this State having repealed the Income Tax Act of 1922, in its

entirety, thereby eliminating as part of the Income Tax Law, the Federal Act, which had been incorporated therein by reference, was no longer to be bound by the Federal Act nor any decisions of any Court construing such Act. We so hold."

Roper v. South Carolina Tax Commission, 99 S. E. 2d 377. Robert A. Dobson, Jr., of Greenville; Julien D. Wyatt, Felix L. Finley, Jr., and John T. Gentry of Pickens, for appellants. T. C. Callison, Attorney General, James M. Windham, Assistant Attorney General, and Donn L. Odum, Legal Assistant, South Carolina Tax Commission, of Columbia, for respondents. (*Petition for writ of certiorari filed in the Supreme Court of the United States, November 12, 1957; Docket No. 608. Certiorari denied, January 6, 1958.*)

WASHINGTON

Foreign corporation with a local sales office and extensive local activities ruled subject to the business and occupation tax.

This was an action by a corporation to recover the business and occupation tax, measured by the gross proceeds of sales to Washington customers by the plaintiff New Jersey corporation, which maintained a local sales office in Seattle, where an average of forty-two residents were employed. The company did not manufacture any of its products in Washington, about seventy-five per cent of the goods sold in that state being purchased from other manufacturers outside the state. Sales were made at retail and at wholesale to Washington customers. Most of the goods were ordered by the local office before or while they were in the process of manufacture, being priced at the place of manufacture and shipped f.o.b. direct to the purchaser under purchase contracts which passed title to the buyers at the place of shipment. The local sales force took orders, passed upon the credit of purchasers and forwarded the orders to the manufacturers for confirmation, notifying the customer and keeping all records of sales transactions, handling, billing and collections and main-

taining a bank account. Complaints were investigated by the local office and recommendations for settlement finally approved by a California office.

The Washington Supreme Court upheld the imposition of the tax, remarking: "Appellant argues that the tax should be apportioned between interstate and local activities. There is no question of apportionment here. The tax is measured solely by appellant's local wholesale and retail activities. No part of the tax is attributable to its manufacturing or other out-of-state activities. The sales are negotiated within the state of Washington, and the fact that delivery is made direct to the purchaser does not change the nature of the local transaction."

United States Steel Corporation v. Washington, 316 P. 2d 1099. Evans, McLaren, Lane, Powell & Beeks and Raymond W. Haman, of Seattle; Thomas Ashby and D. J. McDaniel of San Francisco, Cal., for appellant. John J. O'Connell and Keith Grim of Olympia, for respondent.



state legislation

Delaware—House Substitute No. 1 for House Bill No. 433, Laws of 1957, approved December 20, 1957, provides for a corporation income tax of 5% on taxable income derived from business activities carried on within the State of Delaware or from property located within the state. The tax is first effective with respect to income earned subsequent to December 31, 1957. *Among corporations to which the tax does not apply are corporations maintaining a statutory corporate office in the state but not doing business within the State of Delaware.* Entire net income as defined by the Act excludes interest from investments, dividends, and gains and losses from the sale of stocks, securities and other intangible assets not held primarily for sale in the course of the taxpayer's business.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

INDIANA. Docket No. 582. *Arthur Walter Seed Co. v. McClure*, 141 N. E. 2d 847. (The Corporation Journal, February—March, 1958, page 72.) Property taxes—interstate commerce. Petition for writ of certiorari filed, October 28, 1957. Certiorari denied, December 16, 1957.

MICHIGAN. Docket No. 26. *United States et al. v. City of Detroit*, 77 N. W. 2d 79. (The Corporation Journal, February—March, 1957, page 313.) Property tax on lessee of property leased by Federal government. Appeal filed, October 8, 1956. Probable jurisdiction noted, January 14, 1957. (77 S. Ct. 353.) Argued, November 14, 1957.

MINNESOTA. Docket No. 606. *Minnesota v. Northwestern States Portland Cement Co.*, 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958.

NEW JERSEY. Docket No. 575. *Arizona Western Insurance Co. v. L. L. Constantin & Co.*, 247 F. 2d 388. (The Corporation Journal February—March, 1958, page 67.) Mandatory payment of dividend. Petition for writ of certiorari filed, October 25, 1957. Certiorari denied, December 16, 1957.

OHIO. Docket No. 588. *Youngstown Sheet & Tube Co. v. Bowers*, 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March 1958, page 72.) Property taxes—ores imported from foreign countries. Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958.

SOUTH CAROLINA. Docket No. 608. *Roper v. South Carolina Tax Commission*, 99 S. E. 2d 377. (The Corporation Journal, February—March, 1958 page 73.) Income tax—preferred stock dividend as taxable income. Petition for writ of certiorari filed, November 12, 1957. Certiorari denied, January 6, 1958.

* Data compiled from CCH U. S. Supreme Court Bulletin.



regulations and rulings

Arkansas—Contractors who furnish materials necessary for the completion of their contracts are not required to secure a retail sales tax permit, but must pay the sales tax on such materials as they are purchased direct by the contractor and are not for resale. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 65-028.)

Florida—When outstanding no par stock is surrendered to a corporation by a stockholder in exchange for newly issued no par value stock, the new stock is subject to documentary stamp taxes. Where the owner surrendering the old no par value stock instructs the corporation to issue the new no par value stock to designated third persons, instead of to himself, this transaction is also subject to the tax. (Opinion of the Attorney General, State Tax Reporter, Florida, ¶ 200-109.)

Georgia—The taxable event in the application of the sales and use tax is the first use made of the property in Georgia. Property purchased in Georgia for shipment outside of the state is not subject to the tax at the time of the sale when its first use is intended to take place in another state. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 200-118.)

Domesticated foreign corporations that elect to come under the terms of the law which permits such corporations to acquire the same tax status as domestic corporations to qualify their stock in the hands of Georgia holders for exemption from the Georgia intangibles tax, are required to pay the applicable Georgia intangibles tax on all of their accounts receivable, regardless of where those accounts may have acquired a business or commercial tax situs, except to the extent those corporations show that they have paid intangibles taxes on the accounts in question in states where they have acquired a business or commercial domicile. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 300-102.)

Maryland—Where a foreign corporation engaged in the business of selling bottled gas to Maryland residents continuously installs, replaces and refills the empty bottles and periodically adjusts defective valves, it is doing business in Maryland and is subject to qualification for doing business within the state. (Opinion of the Attorney General to the Secretary of the State Tax Commission, State Tax Reporter, Maryland, ¶ 300-172.)

Minnesota—The power of a state to tax national banks is confined to a taxation of shares of their stock in the names of and against the shareholders, and to an assessment of the real estate in the name of and against the bank itself. The effect is to forbid the state from assessing or taxing any of the personal property of such institutions. (Opinion of the Attorney General, State Tax Reporter, Minnesota, ¶ 24-029.)

New York—Gross receipts from loop traffic, that is, transportation from one point in New York to another point in New York, but traversing another state in part, are taxable under Section 184 of the Tax Law, provided they are apportioned on a mileage basis. (Opinion of the Attorney General, to Department of Taxation and Finance, State Tax Reporter, New York ¶ 98-946.)



some important matters

For February and March

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Alaska—Annual Report due between January 1 and March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Arizona—Returns of Information at the source due on or before February 16.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining.

Arkansas—Franchise Tax Report due on or before April 1.—Domestic and Foreign Corporations.

California—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Colorado—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Connecticut—Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before April 1.—Domestic and Foreign Corporations.

THE CORPORATION JOURNAL

- Delaware**—Tentative or Estimated Corporation Income Tax Returns and Payments due on or before April 1.—Domestic and Foreign Corporations deriving income from business activities carried on in Delaware and from property located in Delaware.
- District of Columbia**—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.
- Dominion of Canada**—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.
- Georgia**—Report of Resident Stockholders and Bondholders due on or before March 1.—Domestic and Foreign Corporations.
- Idaho**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- Illinois**—Annual Report due between January 15 and February 28.— Domestic and Foreign Corporations.
- Kansas**—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.
Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.
- Kentucky**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
List of Resident Stockholders and Bondholders due on or before March 15.—Domestic and Foreign Corporations.
- Louisiana**—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.
Capital Stock Statement due on or before March 1.—Foreign Corporations.
- Maine**—Annual License Fee due on or before March 1.—Foreign Corporations.
- Massachusetts**—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.
Excise Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- Minnesota**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.
Annual Report due between January 1 and April 1.—Foreign Companies.
- Missouri**—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.
Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

THE CORPORATION JOURNAL

Montana—Annual Report of Capital Employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Report of Net Income due on or before March 31.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Nebraska—Statement to Tax Commissioner due on or before March 1.—Foreign Corporations.

Nevada—Annual Statement of Business due not later than the month of March.—Foreign Corporations.

New Hampshire—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

New Mexico—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

New York—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report and Tax of Real Estate Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate Corporations.

Returns of Tax Withheld at the source due on or before March 1.—Domestic and Foreign Corporations.

North Carolina—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

North Dakota—Annual Report due between January 1 and April 1.—Foreign Corporations qualified prior to July 1, 1957.

Annual Report due between January 1 and March 1.—Domestic and Foreign Corporations organized or qualified on or after July 1, 1957 or organized or qualified prior to July 1, 1957, which have elected to become subject to the North Dakota Business Corporation Act of 1957.

Ohio—Annual Franchise Tax Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

Oklahoma—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

THE CORPORATION JOURNAL

Oregon—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Summary of Taxes withheld at the source due on or before February 16.—Domestic and Foreign Corporations.

Rhode Island—Annual Report due during February.—Domestic and Foreign Corporations.

South Carolina—Annual License Tax Report and Tax due on or before March 31.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

South Dakota—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Texas—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

United States—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

Income Tax Return and first half of tax due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

Utah—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Vermont—Returns of Information at the source and Annual Reconciliation of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

Virginia—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due March 1.—Domestic Corporations.

Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due between January 1 and March 1.—Domestic and Foreign Corporations.

Wisconsin—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and March 31.—Domestic and Foreign Corporations.

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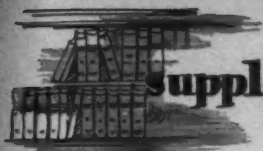
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